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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

Amendment to the Commission's Rules)	WT Docket No. 95-157
Regarding a Plan for Sharing)	RM-8643
the Costs of Microwave Relocation)	

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COMMENTS OF THE
PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION

The Personal Communications Industry Association (PCIA) hereby submits its comments on the proposal of the Industrial Telecommunications Association (ITA) to establish a cost sharing clearinghouse, which was filed with the Wireless Telecommunications Bureau (Bureau) of the Federal Communications Commission (FCC or Commission) on May 24, 1996.¹ PCIA, together with its members, developed the cost sharing and clearinghouse concepts and appreciates the Bureau's tentative conclusion that PCIA should be designated to serve as the clearinghouse to administer the microwave relocation cost sharing plan. As demonstrated in its clearinghouse plan submitted on the same date, PCIA is uniquely qualified to serve as the clearinghouse, will comply with all FCC requirements regarding its operations, and is ready to begin serving this function as soon as its designation is confirmed by the Bureau.

¹ Business Plan for the Administration of a 2 GHz Microwave Relocation Cost-Sharing Clearinghouse, Submitted in Response to FCC Public Notice DA 96-647 in WT Docket No. 95-157 (hereinafter "ITA Proposal").

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With respect to the feasibility and desirability of competing clearinghouses, PCIA sets forth below its concerns about the practical effects and benefits of multiple organizations for the industry being served. In addition, PCIA identifies several important questions about ITA's clearinghouse proposal. Specifically, PCIA is concerned with ITA's neutrality, proposed handling of confidential information, lack of industry participation, funding, excessively optimistic revenue projections, and misunderstanding of FCC rules and information exchange requirements.

I. COMPETING CLEARINGHOUSES ARE FEASIBLE, BUT REDUNDANT ORGANIZATIONS MAY SIMPLY ADD COSTS WITHOUT BENEFITS

In its Public Notice, the Commission invited comment on the feasibility of competing clearinghouses.² While competitive provision of clearinghouse services is certainly feasible, PCIA does have serious reservations that the approval of multiple clearinghouse providers will simply add costs without resulting benefits for the industry. If a clearinghouse truly operates as a non-profit entity under the management of the industry itself, the existence of redundant organizations may only serve to promote inefficiency can increase rather than decrease costs.

PCIA recognizes that effective competition may also produce non-economic benefits that are not reflected in costs or pricing. But, to the extent competition among clearinghouses can be expected to produce such non-economic benefits for the industry

² FCC Public Notice, "Wireless Telecommunications Bureau Solicits Business Plans from Parties Interested in Becoming the Clearinghouse that Will Administer the 2 GHz Relocation Cost-Sharing Plan," DA 96-647 (released Apr. 25, 1996).

here, each clearinghouse must be allowed to operate fully independently, including developing its own procedures and formats in order to best serve its constituency and present the industry with a real choice. However, ITA proposes that all clearinghouses use the same format -- its format, of course -- for the submission of information.³ Thus, even such intangible benefits would be foreclosed under the ITA Proposal, if adopted by the Bureau. Moreover, PCIA's members have noted that the format recommended by ITA is inadequate because it does not take into account that many incumbents are either accepting a lump sum payment and performing their own relocation or are choosing to switch to another communications medium.⁴

Should the Bureau nonetheless decide to authorize multiple clearinghouses, it must require that all designated entities abide by the conditions established by the Commission and the Bureau, which should include the following. First, participation by members of the industry in any particular clearinghouse should be fully voluntary. Entities involved in the relocation process must not be required to register with, pay fees to, or otherwise participate in more than one clearinghouse. In addition, the existence of a clearinghouse or houses must not impinge upon companies' rights to enter into private agreements to govern cost sharing obligations.⁵

³ ITA Proposal at 11.

⁴ In such cases, reimbursement is based on what a comparable system would have cost, if it had been built by the PCS relocater. First Report and Order and Further Notice of Proposed Rulemaking, WT Docket No. 95-157 at Appendix A, ¶ 22 (Apr. 25, 1996).

⁵ First Report and Order at ¶ 77.

Second, any clearinghouse should be operated on a non-profit basis with reasonable fees based on costs and with provision made for the return of any excess funds over expenses to the clearinghouse participants. PCIA is committed to operating a non-profit, cost-effective clearinghouse. As stated in its proposal, PCIA will adjust fees each year based on revenues and, at dissolution, will refund any additional fees collected after expenses and repayment of upfront funding to clearinghouse participants. To ensure that all clearinghouses are truly non-profit and are operating to serve, rather than take advantage of, the PCS industry, the FCC should require that all clearinghouses adopt provisions for the refund of any excess funds collected.

Finally, but most importantly, because cost sharing was designed to facilitate the deployment of PCS, PCS industry participation in any clearinghouse's management is critical to ensuring that the process is administered in such a way as to produce the maximum benefits for the industry. It is also necessary to provide an independent check on any systemic biases in a clearinghouse operation in order to preserve the requisite impartiality of administration of the cost sharing process. Accordingly, the FCC should require that any designated clearinghouse include substantial PCS industry participation in its governance.

II. ITA'S PROPOSAL RAISES SERIOUS CONCERNS REGARDING ITS FEASIBILITY

The ITA proposal raises a number of questions concerning how it will meet the FCC's, the industry's, and ITA's own stated expectations for the provision of clearinghouse services. In particular, PCIA and its members believe that the ITA plan

fails to meet basic clearinghouse requirements in the following areas: problems with confidentiality and neutrality; lack of industry participation; funding; imprudent revenue projections; and misunderstanding of FCC rules and information exchange requirements.

A. The ITA Proposal Does Not Adequately Account for Neutrality and Confidentiality Concerns

As ITA emphasizes in its proposal, neutrality and confidentiality are critical to the success of a clearinghouse.⁶ However, several aspects of ITA's proposal reveal serious problems in these areas. ITA proposes that Mark Crosby, President and Chief Executive Officer of ITA, oversee:

overall strategic planning and policy guidance accountability. . . . Crosby will also be responsible for communicating trends and activities with all industry associations and organizations whose members are affected by microwave relocation cost-sharing developments.⁷

Mr. Crosby's leadership is of particular concern to the PCS industry because of his role as a consultant with the law firm of Keller and Heckman to microwave incumbents in their relocation negotiations.⁸ This concern is exacerbated because of ITA's proposal not to interpose any industry governance body between its own management and the clearinghouse. In contrast, PCIA has taken only general policy positions in the PCS proceedings before the FCC and has not worked for or provided services to any

⁶ ITA Proposal at 19-25.

⁷ ITA Proposal at 75.

⁸ See Comments of PCIA, WT Docket No. 95-157 at Exhibit B (filed Nov. 30, 1995)(contract between Keller and Heckman Group (which includes Mark Crosby) and City of San Diego for relocation negotiation consulting services).

particular PCS provider. In addition, PCIA proposes to establish a Board of Directors to be elected from all clearinghouse participants, similar to the model used by UTAM, Inc., the FCC-designated unlicensed PCS frequency coordinator.

Also of concern is ITA's proposed sale of its PTT software for proximity-threshold calculations to PCS licensees. Although ITA notes the importance of keeping information regarding PCS deployment confidential,⁹ ITA proposes to sell a CD-ROM that will produce "a one-page document and summary report for every microwave path in the market of interest that has one or more PCS Relocator base stations within the box/rectangle."¹⁰ The proposal does not make clear what information will be distributed, but PCIA's members are concerned that information regarding their deployments will be made available to their competitors through these products.

B. A Clearinghouse Cannot Be Effective Without PCS Industry Participation

There is no indication that the PCS industry has had any input into the ITA proposal. ITA states that it does not intend to allow industry participation and that a governing body consisting of PCS providers "may serve to inhibit the ability to respond quickly to changing conditions in the marketplace and to customer requirements."¹¹ However, the "customers" for the clearinghouse will, in fact, be the members of the PCS industry. It is the industry that will be most knowledgeable regarding changes in the PCS market and how the clearinghouse can best facilitate the relocation process.

⁹ ITA Proposal at 20.

¹⁰ ITA Proposal at 38.

¹¹ ITA Proposal at 24-25.

Not allowing industry participation will virtually guarantee that industry needs will not be adequately addressed.

In contrast, the PCS industry has been deeply involved in all phases of the development of PCIA's proposal. Members of the PCS industry, both PCIA members and non-members, helped PCIA develop the initial cost sharing concept which illuminated the need for an administrative body. PCIA's Microwave Relocation Task Force determined a structure for the clearinghouse and devised the estimates on which the business plan and budget were prepared. These licensees are committed to continuing participation in the clearinghouse to ensure that cost sharing meets the industry's needs.

C. ITA's Proposal Is Silent on the Availability of Adequate Funding and Its Revenue Projections Are Excessively Optimistic

ITA states that it, together with Moffet, Larson & Johnson (MLJ), will fund the start-up costs of the clearinghouse with existing resources.¹² However, ITA does not submit a balance sheet or any other information to support its financial ability to undertake the clearinghouse. In contrast, PCIA has firm commitments from A and B block licensees to provide initial funding for beginning clearinghouse operations and has been much more conservative in its initial revenue projections.

While ITA and PCIA have put forward similar cost estimates for the operation of a clearinghouse, they have widely varying estimates of the number of sharing transactions that will be occurring in the first several years of clearinghouse operations.

¹² ITA Proposal at 13.

ITA projects substantial revenues, particularly in the early years, from which ITA apparently expects to obtain cash flow to fund its operations. ITA appears to predict some 4,000 link relocations in the first two years, or more than 80% of the total number of links in the band.¹³ There is no indication that any PCS licensees have assisted ITA in developing its estimates. Also, ITA apparently has not accounted for the impact of a competitive clearinghouse environment in that it appears to assume that it will be compensated for virtually all relocations that occur.

PCIA has utilized much more conservative estimates based upon information supplied by the PCS industry. PCIA's budget assumes 2,000 transactions would be subject to clearinghouse cost sharing procedures in the next five years. This estimate seems far more realistic than ITA's given the total number of links, pace of current relocations, option to use contractual cost sharing, and presence of competing clearinghouses.

If ITA is wrong in its estimates, its cash flow will fall far short of that needed to support clearinghouse operations, leaving participants that have already paid substantial fees with no recourse. However, if PCIA has been overly cautious in its predictions, it will simply readjust its fees downwards. Unlike PCIA, although claiming that it is non-profit, ITA has not committed to adjust its fees if revenues are greater than expenses received or to return any excess fees it collects to clearinghouse

¹³ See ITA proposal at 92. ITA estimates that it will receive \$600,000 in registration fees in the first two years of operation. Since its registration fee will be \$150 per link (ITA Proposal at 83), ITA is predicting that 4,000 links will be registered during its first two fiscal years.

participants. PCIA believes that this should be required of any designated clearinghouse.¹⁴

D. ITA's Proposal Demonstrates Some Misunderstandings of the FCC's Rules and Information Exchange Requirements

In explaining its proposed procedures, ITA demonstrates that it does not have a firm grasp of the complicated rules the FCC has adopted to govern microwave relocation and cost sharing. First, ITA includes an exhibit which suggests that the cap on transaction and consulting relocation costs of 2% of the hard costs involved in a relocation should be added to the reimbursable cost caps of \$250,000 plus \$150,000 for new towers or tower modifications.¹⁵ However, this 2% figure is an independent limitation on the amount of such "soft" costs that can be included within those caps, it is not an additive to them and cannot be used to increase the level of reimbursable costs for cost sharing purposes.¹⁶

ITA also asserts that multiple clearinghouses will have to exchange information in order for the cost sharing process to function smoothly. As long as all PCNs are filed with all clearinghouses PCIA sees no reason why any information will need to be exchanged. For example, if PCS relocater "X" relocates a link and registers that link with PCIA, and PCIA receives a PCN showing that PCS licensee "Y" will owe X cost sharing reimbursement, PCIA can contact Y through the contact information contained in the PCN and notify Y of its obligation even if Y has chosen to use another

¹⁴ See Section I, infra.

¹⁵ ITA Proposal at 49.

¹⁶ See First Report and Order at Appendix A, ¶¶ 21-28.

clearinghouse for its relocation activities. Later, if PCS licensee "Z" distributes a PCN showing that it owes both X and Y reimbursement according to the FCC rules, PCIA will notify Z of its obligation to X and Y's clearinghouse will notify Z of its obligation to Y. PCIA believes that there is little, if any, need for multiple clearinghouses to exchange information and that tightly holding the information collected will help alleviate PCS providers' confidentiality concerns.

III. CONCLUSION

PCIA urges the Bureau to formally designate PCIA as a clearinghouse to administer the cost sharing process. With respect to ITA's competing proposal, serious unanswered questions need to be addressed. However, the need for additional information and clarifications of ITA's proposal should not delay affirmative action on PCIA's plan which was developed and refined with input of the PCS industry itself.

Respectfully submitted,

THE PERSONAL COMMUNICATIONS
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